IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 98 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMUBEN W/O SHAILESHBHAI DHIRUBHAI CHAUDHARI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 98 of 2003

MR NM KAPADIA for Petitioner

MR PRADEEP D BHATE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 20/05/2003

ORAL JUDGEMENT

The petitioner-detenu, Smt.Kamuben Shaileshbhai Chaudhari, in this petition, has challenged the order of detention dated 14.11.2002 passed by the Commissioner of Police, Surat City, i.e. respondent No.1 herein, under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'PASA Act').

In the grounds of detention supplied to the petitioner along with the order of detention, the detaining authority has placed reliance on three cases registered against the petitioner by the Varachha Police Station vide C.R.Nos.5448, 5661 and 5709 of 2002. The first and the last cases are filed for the offences under Sections 66(1)B, 65-E, A, 81 and 116-B; while the second case is filed for the offence under Sections 66(1)B, 65-, E,A and 116-B of the Bombay Prohibition Act. The first offence registered against the petitioner is on 13.6.2002, the second one is registered on 15.9.2002 whereas the third case is filed on 1.10.2002. Besides the aforesaid three cases, the detaining authority has relied upon the incidents of 5.5.2002 and 8.6.2002 and the statements of the witnesses in respect of the said incidents, whose identity has not been disclosed claiming privilege under Section 9(2) of the PASA Act. Considering the aforesaid material, the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act and therefore, with a view to preventing her from acting in any manner prejudicial to the maintenance of public order, she is required to be detained and hence the impugned order of detention has been passed against her on 14.11.2002.

Learned Counsel appearing for the petitioner, though raised many contentions, it is not necessary for me to consider all the contentions since the petition is required to be disposed of only on the ground that there is a delay in passing the order of detention against the petitioner. Learned Counsel submits that the petitioner was arrested for the last offence on 1.10.2002 and the impugned order has been passed on 14.11.2002, i.e. after about 40-45 days after the petitioner was arrested. In the submission of learned Counsel, the unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. Learned Counsel has placed reliance on a decision rendered by the Apex Court in the case of Pradeep Nilkanth Paturkar v. S.Ramamurti and ors., reported in AIR 1994 SC 656 and a decision of this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City and ors., reported in 1997 (1) G.L.H. 381. In both the cases, the order of detention was set aside on the ground of unexplained delay, whether short or long, especially when a specific plea of delay has been raised.

In the instant case, the respondents, though served, have not filed any reply. Naturally, therefore, the delay is not explained. Under the circumstances, I

am of the opinion that the unexplained delay makes a ground of detention not proximate, vitiating the order of detention.

In the result, the petition is allowed. The impugned order of detention dated 14.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.